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Property Insurance - When Interest in Property Must Exist

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provocation in mitigation of actual or compensatory damages.[20] The leading case in these decisions is *Robison v. Rupert,*[21] in which the Pennsylvania court said that if there were a reasonable excuse for the defendant arising from the fault of the plaintiff but not enough to entirely justify the act there can be no exemplary damages and the circumstances of mitigation must be applied to the actual damages. Provocation and malice on the defendant's part are punished by awarding damages exceeding the measure of compensation, and on the plaintiff's part by giving him less than that measure.

Despite the contrary holding at common law, there is much to be said in favor of the Louisiana theory which denies recovery to the person who provokes the attack by abusive languages. A person must come into court with clean hands and if both parties are at fault neither of the two wrongdoers can recover. The principal case, *Manuel v. Ardoin,* reiterates that rule, and affirms a wholesome trend in Louisiana decisions to treat insulting words as sufficient fault to bar a recovery.

E.P.C.

PROPERTY INSURANCE—WHEN INTEREST IN PROPERTY MUST EXIST—*A* and *B,* jointly owning a residence, obtained a fire policy. Later *A* sold *B* her one-half interest in the residence covered by the policy, but made no special assignment of the policy to *B.* Upon destruction of the residence by fire, *A* contended that in absence of a special assignment of the policy she retained her interest in the policy, and one-half of its benefits inured to her. In an interpleader suit, the lower court so held and *B* appealed. *Held,* for *B.* The court reiterated the general rule that, to recover on a fire insurance policy, one must have an insurable interest at the time of the inception of the policy and also at the time the loss occurs. *Union Central Life Insurance Company v. Harp,* 203 La. 806, 14 So. (2d) 643 (1943).

That the insured must have an insurable interest in the subject matter of the policy is a cardinal principle of insurance law. "A person has an insurable interest in property when he sustains

20. Kiff v. Youmans, 86 N.Y. 324, 40 Am. St. Rep. 543 (1881); Genung v. Baldwin, 77 App. Div. 584, 79 N. Y. Supp. 569 (1902).
21. 23 Pa. 523 (1854).

such relations with respect to it that he has a reasonable expectation, resting upon a basis of legal right, of benefit to be derived from its continued existence, or of loss or liability from its destruction."[1] The question arises—When must the insurable interest exist? That is, need the insured only have an insurable interest at the inception of the policy, or at the time of the loss of the property, or must he have an insurable interest *both* at the inception of the policy and at the time of the loss?

The few Louisiana cases in point have uniformly stated that the insured must have an insurable interest both at the inception of the policy and at the time of the loss of the thing insured.[2] Where the claimant owned the property at the time the insurance was taken but subsequently disposed of or was relieved of his interest in the property prior to the loss, the Louisiana courts have denied his right to share in the insurance proceeds.[3] Such was the actual holding in the principal case. Conversely, following the rule stated in our Louisiana cases, it seems the court would hold that, if one had an insurable interest at the time of the loss of the property, but had no interest at the inception of the policy, he would not be allowed a recovery. No case directly in point has been found, and this converse proposition thus appears as dictum. However, the consistency of its repetition would

1. Vance, Handbook of the Law of Insurance (2 ed. 1930) 124, § 50.

2. Power v. Ocean Insurance Co., 19 La. 28, 30, 31 (1841); Bell v. Firemen's Insurance Co., 3 Rob. 423, 426 (La. 1843); Marcuse v. Upton, 9 La. App. 28, 30, 118 So. 790, 791 (1928); Davis-Wood Lbr. Co. v. Insurance Co. of North America, 154 So. 760, 764 (La. App. 1934).

3. Macarty v. Commercial Ins. Co., 17 La. 365 (1841). Plaintiff had a policy covering a house and kitchen for one year, both being destroyed within that time. Prior to destruction, the insured had made a donation inter vivos of the property. The court held there was no insurable interest at the time of the loss as the loss would fall on the donee.

Bell v. Firemen's Insurance Co., 3 Rob. 423 (La. 1843). Plaintiff insured a boat and later sold it, taking notes in payment, secured by a mortgage. The boat was destroyed by fire. Held, the plaintiff, being neither owner nor privileged creditor when the boat burned, he had no insurable interest and could not claim the loss.

Pike v. Merchants' Mutual Ins. Co., 26 La. Ann. 505 (1874). *A*, by agreement with *B*, was to insure a steamer. *A* insured the steamer and transferred the policy to *B*. Upon *A's* nonpayment, *B* paid for the policy. *A* fraudulently sold his interest in the steamer acquired from *B* and it fell into the hands of a United States marshal. The steamer was destroyed. Held, *B* had no insurable interest after the marshal's sale and therefore had no right to the proceeds.

Marcuse v. Upton, 9 La. App. 28, 118 So. 790 (1928). The defendant sold his one-half interest in property covered by a policy, the sale being prior to the destruction of the property by fire. Held, a party loses all title or interest in a policy the instant he parts with ownership or interest in the thing insured, and has no longer any interest in the policy susceptible of assignment by him.

make it rather difficult for the Louisiana court subsequently to adopt a different view.

It may be well to analyze carefully the logic of our judicial statements that to recover on a fire insurance policy "one must have an insurable interest at the time of the inception of the policy and also at the time the loss occurs." The requisite of insurable interest at the inception of the policy appears to serve no sound or substantial purpose. The important considerations appear to be that the insured must have obtained the policy in good faith and must have a real interest at the time of the loss. The necessity of an interest at the time of the loss would eliminate the possibility of using the insurance policy as a device for wagering or gaming. If the insured has no interest at the time of the loss, recovery is impossible. If the insured has such an interest, he has met the requirement and there is no need for denying recovery. This view would permit one to insure property which he contemplated buying at a subsequent date, the risk attaching at the time of the purchase or when an interest is acquired.

Professor Vance, the leading modern authority on insurance law, admits that the books and reports are full of judicial statements requiring an insurable interest both at the inception of the policy and at the time of the loss, but states that this is a minority view. Vance adequately expresses the majority rule:

> "In order that insurance on property shall be valid, an interest must exist in the insured at the time of the loss. It is not necessary that an interest shall exist at the time of the issue of the policy, provided the parties intend that the risk shall attach only when an interest accrues to the insured; nor, in the absence of an express provision to that effect, does the suspension of the insured's interest during the currency of the policy defeat a recovery if an interest has been reacquired before the loss occurs."[4]

Insofar as Louisiana jurisprudence requires an insurable interest at the inception of the policy, as well as at the time of the loss, it goes further than either logic, modern authority, or actual judicial decisions justify.

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4. Vance, op. cit. supra note 1, at 143, § 51. Power v. Ocean Insurance Co., 19 La. 28 (1841), in accord on the proposition that a temporary suspension of the interest does not preclude recovery, if the insured has an interest at the time of the loss.